

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

DEQUE SYSTEMS INC.,

Plaintiff,

Case No. 1:24-cv-00217-AJT-WEF

v.

BROWSERSTACK, INC, and
BROWSERSTACK SOFTWARE PVT.
LTD.,

Defendants.

**DEQUE SYSTEMS INC's RESPONSES
TO DEFENDANTS BROWSERSTACK
SOFTWARE PVT. LTD.'S FIRST SET
OF INTERROGATORIES**

NOW COMES Plaintiff Deque Systems Inc. ("Deque" or "Plaintiff"), by and through its undersigned counsel, and hereby provides its Responses to Defendant BrowserStack Software Pvt. Ltd.'s First Set of Interrogatories.

For each respective interrogatory response, Deque incorporates by reference the General Objections and corresponding specific objections as set forth in Deque's Objections to Defendants' First Set of Interrogatories served on July 8, 2024 ("Deque's Objections").

INTERROGATORY NO. 1: For each Asserted Work, describe in detail the facts and circumstances related to its conception, creation, development, and copyright registration, including all dates related thereto.

RESPONSE: Subject to and without waiving Deque's Objections, Deque responds as follows:

The conception, creation and development for the Pro version of the Axe DevTools® Chrome Extension began in 2018 and was published initially as version 3.7.0 of the axe DevTools® browser extension. Revisions, features, and improvements were added in subsequent versions of the product.

The axe DevTools® browser extension software was initially developed within a Bitbucket repository, then, starting at least with version 3.9.0, development was moved to a github repository.

The conception, creation and development for the Docs-Issue-Help Pages began under the title Rule Help Pages (in web application), within github. Development eventually moved to a different github repository.

The following individuals, all current or former employees of Deque, contributed to the conception, creation and/or development of at least one of the Axe DevTools® Chrome Extension versions in the Asserted Works:

Allen, Ben	Dalvi, Shripad	Lambert, Steven
Allen, Matt	Deo, Abhisheik	Lanz, Anastasia
Anand, Madhukar	Dhindsa, Amandeep	Larsen, Erik
Arnett, Kim	Domagalski, Jennifer	Loding, Nathan
Baddam, Nitya	Erukulla, Anudeep	Long, Matt
Barrell, Dylan	Fiers, Wilco	Mahapatro, Mousumee
Barrell, Noe	Freedman, Dani	Mamilla, Manideep
Bhima, Ranganath	Fulco, Brandon	Mathieson, Stephen
Bjorge, Dan	Gafoor, Shaik Abdul	McMeeking, Christopher
Boateng, Samuel	Goli, Venkat	Miele, Peter
Bodell, Patrick	Gomez, Victor	Mishra, Krishnakanth
Bohman, Carl	Gorijavolu, Rajesh	Naifeh, Justin
Bohman, Paul	Grenier, Paul	Newman, Tristan
Bohman, Timothy	Gupta, Sachin	Okros, Alex
Borin, Jessica	Hafez, Yahya	Okten, Baha
Bowling, Dan	Hambeere, Balaji	Olesen, Gabe
Boycheva, Karina	Ho, Jenny	Omari, Bobby
Braccia, Tommy	Huey, Trevor	Owens, Kate
Brady, Hunter	Huff, Robert	Parashar, Maneesh
Bromberg, Caroline	Huggins, Chris	Pavka, Anitra
Busillo, Thomas	Isner, Matthew	Perini, Abbey
Chandra, Devanshu	Kalhe, Apurva	Perlman, Aaron
Chen, Josie	Khandelwal, Vipul	Pletzer, Megan
Chinnasumala, Nutan	Kirwin, Josh	Rai, Smitha
Cutler, Adam	Korth, Jennifer	Rhodes, Keith
Dailey, Jennifer	Kumar, Gaurav	Ries, Scott

Roocroft, Melissa
Samudrala,
Harshavardhan
Sansalone, Trevor
Schneiderman, Harris
Schwendeman, Peter
Sebastian, Anup
Shankrappa, Netravathi
Sharma, Anurag
Sharp, Shawn
Sheffer, Dylan
Shekhawat, Shailesh

Siek, Michael
Singh, Harmanpreet
Sivakumar, Priya
Smith, Tom
Spalla, Kate
Sweeney, Paul
Teotia, ArjunDr
Thakur, Gaurav
Thickens, Jonathan
Tregubov, Dymtro
Upopadhyay, Arup
Vanamala, Nagaraj

Verma, Shobhit
Wesslen, Erik
Wilson, Jason
Wroten, Ava
Yadav, Nilesch
Yomtoob, Rachael
Yono, Christopher
Yushenko, Victor
Zirlinger, Eric

At least the following individuals, current employees of Deque, contributed to the conception, creation and/or development of at the Docs-Issue-Help Pages versions in the Asserted Works: Harris Schneiderman, Matthew Isner. Investigation is ongoing into other potential contributors.

In November 2023, Deque submitted copyright registration applications for the versions of the Axe Dev Tools software comprising the Asserted Works. In January 2024, Deque submitted a copyright registration application for the Rules Help Pages. All of the copyright registration applications for the Asserted Works were processed using special handling at the Copyright Office.

Harris Schneiderman, Product Manager, Deque Systems, assisted outside counsel in the collection of deposit copies for each registration.

Deque expressly reserves all rights to supplement, revise, and/or amend its response to this Interrogatory as its investigation and discovery proceed in accordance with the Federal Rules of Civil Procedure, the Court's Local Rules, the operative Joint Discovery Plan (ECF No. 35-1) and Scheduling Order (ECF No. 37), and any other applicable agreements or orders.

INTERROGATORY NO. 2: Identify all Allegedly Copied Content, including where such Allegedly Copied Content exists in each Asserted Work and in each Accused Product.

RESPONSE: Subject to and without waiving Deque's Objections, Deque responds as follows:

Deque's investigation is ongoing as Deque has not yet received any production from Defendants. As an initial matter, Deque answers by referencing the examples and comparisons set forth in the First Amended Complaint (Dkt. 44-1) at paragraphs 42-46.

Deque expressly reserves all rights to supplement, revise, and/or amend its response to this Interrogatory as its investigation and discovery proceed in accordance with the Federal Rules of Civil Procedure, the Court's Local Rules, the operative Joint Discovery Plan (ECF No. 35-1) and Scheduling Order (ECF No. 37), and any other applicable agreements or orders.

INTERROGATORY NO. 3: For any Allegedly Copied Content identified in response to Interrogatory No. 2, describe in detail the facts and circumstances related to its conception, creation, and development, including the first date such Allegedly Copied Content was fixed in any tangible medium of expression and any author(s) of such Allegedly Copied Content.

RESPONSE: Subject to and without waiving Deque's Objections, Deque responds as follows:

See response to Interrogatory No. 1. Deque's investigation is ongoing as Deque has not yet received any production from Defendants. As an initial matter, Deque answers by referencing the examples and comparisons set forth in the First Amended Complaint (Dkt. 44-1) at paragraphs 42-46. Some of the copied content in those examples and comparisons was completed in 2019, fixed in tangible medium in axe DevTools® v3.9.0, and first published on August 8, 2019. Other portions of the copied content in the First Amended Complaint was completed in 2019, fixed in tangible medium in axe DevTools® v4.1.0 and first published on October 21, 2019.

The Allegedly Copied Content found in the Deque Rules Help Pages was first published on November 25, 2020.

Deque expressly reserves all rights to supplement, revise, and/or amend its response to this Interrogatory as its investigation and discovery proceed in accordance with the Federal Rules of Civil Procedure, the Court's Local Rules, the operative Joint Discovery Plan (ECF No. 35-1) and Scheduling Order (ECF No. 37), and any other applicable agreements or orders.

INTERROGATORY NO. 4: State all facts supporting your claim that any Accused Product constitutes a derivative work of one or more Asserted Works.

RESPONSE: Subject to and without waiving Deque's Objections, Deque responds as follows:

See First Amended Complaint (Dkt. 44-1) at ¶¶ 42-48, 50-61. The BrowserStack Accessibility Toolkit is a work based on or derived from one or more versions of Deque's axe DevTools® browser extension for Chrome. Deque's investigation is ongoing as Deque has not yet received any production from Defendants.

Deque expressly reserves all rights to supplement, revise, and/or amend its response to this Interrogatory as its investigation and discovery proceed in accordance with the Federal Rules of Civil Procedure, the Court's Local Rules, the operative Joint Discovery Plan (ECF No. 35-1) and Scheduling Order (ECF No. 37), and any other applicable agreements or orders.

INTERROGATORY NO. 5: For each Asserted Work, identify each exclusive right under 17 U.S.C. § 106 that you claim was infringed, and the factual and legal basis for such infringement claim as asserted against each BrowserStack Defendant.

RESPONSE: Subject to and without waiving Deque's Objections, Deque responds as follows:

The rights Defendants infringed include the rights of (1) reproduction, (2) preparation of derivative works, and (3) distribution. *See* Amended Complaint at ¶¶ 42-48, 50-61. Deque's investigation is ongoing as Deque has not yet received any production from Defendants.

Deque expressly reserves all rights to supplement, revise, and/or amend its response to this Interrogatory as its investigation and discovery proceed in accordance with the Federal Rules

of Civil Procedure, the Court's Local Rules, the operative Joint Discovery Plan (ECF No. 35-1) and Scheduling Order (ECF No. 37), and any other applicable agreements or orders.

INTERROGATORY NO. 6: Identify all studies, surveys, investigations, research, development, analyses, or opinions concerning the Accused Product, including, but not limited to, any comparing or contrasting the Accused Product with any Asserted Work or any concerning any similarities or differences between the Accused Product and any Asserted Work.

RESPONSE: Subject to and without waiving Deque's Objections, Deque responds as follows:

Harris Schneiderman, Product Manager, Deque Systems, produced a study which compared the publicly available source code of Defendants' Accessibility Toolkit browser extension to the publicly available source code of Deque's axe DevTools® browser extension. Further to its response, Deque will produce one or more documents prepared by Mr. Schneiderman in furtherance of his efforts.

Deque expressly reserves all rights to supplement, revise, and/or amend its response to this Interrogatory as its investigation and discovery proceed in accordance with the Federal Rules of Civil Procedure, the Court's Local Rules, the operative Joint Discovery Plan (ECF No. 35-1) and Scheduling Order (ECF No. 37), and any other applicable agreements or orders.

INTERROGATORY NO. 7: Identify and describe your discovery (including when and how) of any activities by a BrowserStack Defendant which you claim infringed any Asserted Work, whether you contend any such infringing activities are continuing, and if so, how they are continuing.

RESPONSE: Subject to and without waiving Deque's Objections, Deque responds as follows:

See Amended Complaint at ¶¶ 42-48, 50-61. Deque further refers to its response to Interrogatory No. 6 above.

Deque expressly reserves all rights to supplement, revise, and/or amend its response to this Interrogatory as its investigation and discovery proceed in accordance with the Federal Rules

of Civil Procedure, the Court's Local Rules, the operative Joint Discovery Plan (ECF No. 35-1) and Scheduling Order (ECF No. 37), and any other applicable agreements or orders.

INTERROGATORY NO. 8: For each cause of action asserted in this Action, identify and describe any attempts you made before filing this Action to mitigate any alleged damages or to otherwise make any alleged wrongful conduct by any BrowserStack Defendant cease or stop (*e.g.*, any communications, notices, or cease and desist letters).

RESPONSE: Subject to and without waiving Deque's Objections, Deque responds as follows:

Deque did not contact any BrowserStack Defendant after discovering the conduct described in the First Amended Complaint and before filing the original complaint.

Deque expressly reserves all rights to supplement, revise, and/or amend its response to this Interrogatory as its investigation and discovery proceed in accordance with the Federal Rules of Civil Procedure, the Court's Local Rules, the operative Joint Discovery Plan (ECF No. 35-1) and Scheduling Order (ECF No. 37), and any other applicable agreements or orders.

INTERROGATORY NO. 9: For each claim for relief asserted in this Action, identify each item of damages to which you claim you are entitled, including the type of damages, the amount, how such amounts are calculated, and the legal and factual basis for your recovery of such damages item from each BrowserStack Defendant.

RESPONSE: Subject to and without waiving Deque's Objections, Deque responds as follows:

For its copyright infringement claim, Deque intends to seek all damages available under the Copyright Act, including but not limited to actual damages suffered by Deque as a result of Defendants' infringing activities, and any profits recovered by Defendants that are attributable to their infringing activities and not taken into account in computing the actual damages, and injunctive relief.

For its false advertising claims, Deque intends to seek all available damages, including at least actual damages and injunctive relief.

For its breach of contract claim, Deque intends to seek its lost profits due to Defendants' breaching activities and disgorgement of Defendants' profits related to such activities.

To the extent any damages related to Defendants' ill-gotten gains are not recoverable under either the Copyright Act or under a breach of contract claim, Deque will pursue recovery of such damages under a theory of unjust enrichment. Such damages may include, but will not be limited to, Defendants' profits from sales of any functionally associated products obtained from selling products violating either Deque's copyrighted works or the contracts at issue, or from misappropriating any other of Deque's proprietary products.

Deque also intends to seek reasonable attorney's fees associated with this lawsuit.

Deque further states that the calculations of the amount of damages that it seeks to recover, and all facts and opinion supporting such amounts, are incomplete at this time as Deque has not received any production of documents from Defendants. Such amounts shall be disclosed at a future time in this litigation, through either expert reports or otherwise.

Deque expressly reserves all rights to supplement, revise, and/or amend its response to this Interrogatory as its investigation and discovery proceed in accordance with the Federal Rules of Civil Procedure, the Court's Local Rules, the operative Joint Discovery Plan (ECF No. 35-1) and Scheduling Order (ECF No. 37), and any other applicable agreements or orders.

INTERROGATORY NO. 10: Identify all persons who provided knowledge, documents, or information used, reviewed or referenced in answering any interrogatories served in this Action, designating the number of each interrogatory for which such persons provided the knowledge, documents, or information.

RESPONSE: Subject to and without waiving Deque's Objections, Deque responds as follows:

In addition to outside counsel, the following employees of Deque provided information used in answering these interrogatories: Harris Schneiderman, David Musser, Dylan Barrell.

Deque expressly reserves all rights to supplement, revise, and/or amend its response to this Interrogatory as its investigation and discovery proceed in accordance with the Federal Rules of Civil Procedure, the Court's Local Rules, the operative Joint Discovery Plan (ECF No. 35-1) and Scheduling Order (ECF No. 37), and any other applicable agreements or orders.

Dated: July 29, 2024

DYKEMA GOSSETT PLLC

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Attorneys for Plaintiff Deque Systems Inc.

VERIFICATION

Pursuant to 28 U.S.C. § 1746, I, _____ declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and/or belief, on the basis of the information supplied to me and available at the time these interrogatories were answered.

Executed on July ___, 2024

Deque Systems Inc.

By: _____

Its: _____

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONSES TO DEFENDANT
BROWSERSTACK SOFTWARE PVT. LTD.'S FIRST SET OF INTERROGATORIES**,
were served on counsel for BrowserStack, Inc. and BrowserStack Software Pvt. Ltd., on the date
indicated below by email addressed to bjones@cblaw.com; phaack@martonribera.com;
rlifson@cblaw.com; ryan@martonribera.com; and songmee@martonribera.com.

Dated: July 29, 2024

/s/ Steven McMahon Zeller

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